

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

GABRIEL MORENO and)
DIANA AGUILAR,) Cause No. 1:19-cv-74
)
Plaintiffs,) Missouri Circuit Court for Scott County
) Cause No.: 18SO-CV02004
vs.)
)
MSSM TRANSPORTATION, INC. and) **JURY TRIAL DEMANDED**
AUTOBAHN FREIGHT LINES, LTD.)
Defendant.)

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441, et seq., Defendants MSSM Transportation, Inc. and Autobahn Freight Lines, Ltd. file their Notice of Removal of this lawsuit, originally filed in the Circuit Court of Scott County in the State of Missouri, and in support of this Notice, state:

1. This case is a civil action over which this Court has original subject matter jurisdiction, pursuant to 28 U.S.C. § 1332, and is one which may be removed to this Court pursuant to 28 U.S.C. § 1441 et seq.

2. Plaintiffs' Amended Petition contains allegations of negligence and is a controversy between citizens of the States of Texas and Michigan. (*See* Plaintiffs' Amended Petition, attached as Exhibit A).

3. Plaintiffs' Amended Petition does not assert either Plaintiff's state of citizenship, but does state that each is a resident of the State of Texas. (*Id.* at ¶¶1-2.)

4. Property records recorded by the Clerk of Cameron County, Texas show that Plaintiff Gabriel Moreno has owned residential property in Los Indios, Texas since 2003. (General Warranty Deed, attached as Exhibit B.) Additionally, records from Cameron County Office of the Tax Assessor-Collector show Plaintiff Gabriel Moreno has maintained property

taxes on this property through 2017. (Cameron County Tax Assessor-Collector Records, attached as Exhibit C.)

5. Property records recorded by the Clerk of Cameron County, Texas also show that Plaintiff Diana Aguilar has owned residential property in Indian Lake, Texas since 2006. (General Warranty Deed, attached as Exhibit D.) Likewise, records from the Cameron County Office of the Tax Assessor-Collector show Plaintiff Diana Aguilar has maintained property taxes on this property through 2017. (Cameron County Tax Assessor-Collector Records, attached as Exhibit E).

6. Since 2003, Plaintiff Gabriel Moreno has listed his mailing address as P.O. Box 889, Los Indios, TX 78567. *See* Ex. B, C.

7. Since 2006, Plaintiff Diana Aguilar has listed her mailing address as 75 Rio Vista Dr. S, Indian Lake, TX 78566. *See* Ex. D, E.

8. Citizenship of an individual person is established by the person's physical residence and the intent to remain in that state. *Altimore v. Mount Mercy College*, 420 F.3d 763, 768 (8th Cir. 2005) (physical presence plus intent to remain establishes citizenship).

9. When determining whether a person has an intent to remain in a state, Courts will look to the "declarations, exercise of civil and political rights, payment of taxes, obtaining of licenses, location of business or occupation, and ownership of property." *Eckerberg v. Inter-State Studio & Publishing Co.*, 860 F.3d 1079, 1085 (8th Cir. 2017) (quoting *Bruton v. Shank*, 349 F.2d 630, 631 n.2 (8th Cir 1965))

10. Plaintiffs' ownership of property, payment of personal property taxes, and mailing addresses demonstrate that each currently resides in the State of Texas and intends to remain there indefinitely. *See Id.* Plaintiffs' are therefore citizens of Texas. *See Altimore*, 420 F.3d at 768.

11. MSSM Transportation, Inc. is incorporated in the State of Michigan and its

principal place of business is located at 35066 Davison Drive, Sterling Heights, Michigan 48310. (Articles of Incorporation, attached here as Exhibit F).

12. Autobahn Freight Lines, Ltd. is incorporated in the State of Michigan and its principal place of business is located at 27 Automatic Rd Brampton, ON L65588 CAN. (Articles of Incorporation, attached here as Exhibit G); (2018 Annual Report, attached here as Exhibit H); (Affidavit of Kulwant Mann, attached here as Exhibit I).

13. “[A] corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business.” 28 U.S.C.A. § 1332(c).

13. Defendant MSSM Transportation, Inc. is therefore a citizen of Michigan.

14. Defendant Autobahn Freight Lines, Ltd. is therefore a citizen of Michigan and Canada.

16. Plaintiff Gabriel Moreno admits his claimed damages exceed \$75,000. (Responses to Requests for Admission, attached here as Exhibit J)

17. Plaintiff Diana Aguilar admits her claimed damages exceed \$75,000. (Responses to Requests for Admission, attached here as Exhibit K).

18. The amount in controversy for both Plaintiffs’ claims therefore exceeds \$75,000.

19. This Notice of Removal is timely under 28 U.S.C. § 1446(b)(3) because it is filed within thirty (30) days after Defendants received papers from which it could be ascertained that the case is one which is removable.

20. “The thirty-day time limit of section 1446(b) begins running upon receipt of the initial complaint only when the complaint explicitly discloses the plaintiff is seeking damages in excess of the federal jurisdictional amount.” *In re Willis*, 228 F.3d 896, 897 (8th Cir. 2000)

21. In their Amended Petition, each Plaintiff claimed damages totaling, “a just and

reasonable sum in excess of \$25,000". Ex A.

22. The thirty (30) day time limit under 28 U.S.C. §1446(b) therefore began running when Defendants received Plaintiffs' respective admissions regarding the total amount of damages being claimed. *Willis*, 228 F.3d 896 at 897.

23. Plaintiffs' served their admissions to Defendants' by placing them in the mail on April 5, 2019. (Certificate of Service, attached here as Exhibit L)

24. For purposes of computing a time period, when the last day falls on a "Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday." Fed. R. Civ. P. 6(a)(1)(C).

25. The thirtieth day following April 5, 2019 was Saturday, May 4, 2019.

26. This Notice of Removal is therefore timely because it is filed on Monday, May 6, 2019.

27. Venue is proper in this Court pursuant to 28 U.S.C. §1441 and under Local Rule 3-2.07 because this action was originally filed in Scott County, Missouri, which is included in this Court's judicial area.

28. Attached as Exhibit M is a true and correct copy of all process, papers, exhibits, pleadings and orders filed with the state court in this action.

29. Attached as Exhibit N is the Eastern District of Missouri Cover Sheet.

30. Attached as Exhibit O is the Original Filing Form.

WHEREFORE Defendants MSSM Transportation, Inc. and Autobahn Freight Lines, Ltd. pray that the above-captioned matter be removed from the Missouri Circuit Court of Scott County.

/s/ Joseph R. Swift

Joseph R. Swift, #37241
BROWN & JAMES, P.C.
800 Market Street, Suite 11100
St. Louis, Missouri 63101
jswift@bjpc.com
(314) 421-3400
(314) 421-3128 FAX
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2019, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

Michael P. Corrigan
Nicole Burlison Knepper
Padberg, Corrigan & Appelbaum
1926 Choteau Ave
St Louis, MO 63103
michael@padberglaw.com
Attorneys for Plaintiff

/s/ Joseph R. Swift

20859988.1